IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2523 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HUSSENI TAEB ALI

Versus

DEPUTY COLLECTOR (N A)

Appearance:

NOTICE SERVED for Petitioner.

Mr. Sudhir Mehta, AGP for Respondent.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 20/02/2002

ORAL JUDGEMENT

The present petition was filed by the petitioner through his advocate, late Shri B.H. Mehta. After the death of the said advocate, a fresh notice was issued on the petitioner on 30.5.1997 and it was duly served on the petitioner on 25-6-1997. Inspite of the service having been effected on the petitioner, neither the petitioner remained present nor any appearance was filed on his behalf. This Court is, therefore, constrained to dispose

of the present petition in the absence of the petitioner.

2. Heard Mr. Sudhir Mehta, learned Assistant Government Pleader appearing on behalf of the respondent. The petitioner in this petition has challenged the order passed by the Special Secretary (Appeals), Revenue Department, Gujarat State, Ahmedabad, in Revision Application No. 1163 of 1984 confirming the order passed by the Collector, Ahmedabad, in Appeal No. 190 of 1983 confirming the order passed by the respondent in N.A. No. 3125 dated 30-5-1983. The petitioner has also prayed for quashing and setting aside all the three orders passed by the authorities below and further prayed to hold that the petitioner was not liable to pay conversion taxes and penalty of Rs. 2,904/= to the respondent. By way of an interim relief the petitioner has prayed for stay against the execution and implementation of the order passed by the City Deputy Collector, i.e., respondent in N.A. No. 3125 dated 30-5-1983.

3. On 7-10-1987, this Court (Coram: A.P. Ravani, J.) passed an order granting interim relief to the petitioner on the condition that the petitioner shall pay to the respondent, 50% of the tax amount demanded from him within four weeks from the date of the order and for rest of the amount, the petitioner shall furnish security to the satisfaction of the respondent No.1 and he shall also file an undertaking in this Court that in case the petitioner fails, the petitioner shall pay the balance amount within a period of one month from the date of decision by this Court. This Court has also directed the petitioner to file undertaking within one week from the date of the decision of this Court. This Court has also made it clear that failure to make payment and/or to furnish security and/or to file undertaking as stated above shall result into automatic vacating of interim relief. It appears from the record that no undertaking has been filed by the petitioner. The learned Assistant Government is also not in a position to state whether any payment as ordered by this Court has been made to the petitioner or that any undertaking has been filed. In view of this, there is no question of operation of any interim relief in favour of the petitioner.

4. As stated above, the main challenge of the petitioner is with regard to levy of conversion taxes including penalty amounting to Rs. 2,904/= by the respondent vide his order dated 30-5-1983 covering the period from 1978-79 to 1982-83. As per the said order, the respondent has averred that the petitioner was liable to pay Rs. 136.20 at 00.6 ps. per meter for 2270 meters

for residential use and Rs. 9/= at 0.15 ps. per meter for 60 meters for using the land for commercial purposes. Thus, in all the petitioner was liable to pay Rs. 145.20 as taxes and he has to pay 20 times that amount as penalty.

5. Being aggrieved by the said order passed by the respondent on 30-5-1983, the petitioner preferred an appeal before the Collector, Ahmedabad, who confirmed the order of the Deputy Collector and dismissed the appeal vide his order dated 15-10-1984.

6. Being further aggrieved and dissatisfied with the said order of the Collector dismissing the petitioner's appeal, the petitioner filed Revision Application before the Special Secretary (Appeals), Revenue Department, Ahmedabad. The Special Secretary has also dismissed the appeal of the petitioner vide his order dated 23.12.1985.

7. The order of the Special Secretary (Appeals) was challenged in this writ petition by the petitioner on the ground that the Collector has not granted the opportunity of hearing to the petitioner; that the order passed by the Collector was against the principles of natural justice; that the petitioner was not the owner of the shops alleged to have been built on the margin land in violation of the permission granted by the Municipal Corporation; that the alleged construction of these shops was on the area of 30 sq.yds. and so conversion taxes and penalty could have been levied only on the 30 sq.yards of land and not on the whole area; and that no sanction was necessary for construction when the area was outside the area of the Ahmedabad Municipal Corporation at the time when the construction was made.

8. I have heard the learned Assistant Government pleader appearing for the respondent, and I have also gone through the orders passed by the authorities below. Despite service of fresh notice, the petitioner did not choose to remain present and this fact itself shows that he is not interested in pursuing the matter. Even otherwise all the three authorities below have taken a concurrent view and in view of this concurrent finding given by all the three authorities below, I do not find any justification to interfere in the orders passed by authorities below, while exercising the jurisdiction under Article 227 of the Constitution of India. Since there is no infirmity in the orders passed by the authorities below, I reject this petition. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]